

Board of Appeals

Town Hall • 40 Center Street • Fairhaven, MA 02719

Meeting MinutesFAIRHAVEN TOWN CLERK
RCUD 2023 SEP 26 PM2:11**I. ADMINISTRATIVE BUSINESS****1. Quorum/Attendance**

Kenneth Kendall called for a motion to open the July 11, 2023 meeting at 6:00 PM. A motion to open the meeting was made by Ruy daSilva and was seconded by Andrew Romano. The motion passed unanimously via roll call vote from Peg Cook, Ruy daSilva, Andrew Romano, and Pat Carr.

Kenneth Kendall then opened the meeting and read the protocol for Zoom meetings and Open Public Meeting Law.

Kenneth Kendall advised that the meeting was being conducted in-person and remotely, consistent with Chapter 22 of the Acts of 2022. The legislation suspends the requirement of Open Meeting Law to have all meetings in a publicly accessible physical location.

For this meeting, the Zoning Board of Appeals convened in-person, as well as by telephone and video conference via Zoom as posted on the Town's website identifying how the public may join. The meeting was recorded and will be televised at a later date; some attendees participated by phone and video conference and used chat on Zoom.

Quorum/Attendance, Town Hall: Kenneth Kendall, Ruy daSilva, and Andrew Romano

Zoom: Peg Cook and Patrick Carr

Absent: Peter DeTerra, Alberto Silva, Daryl Manchester, and Nicholas Sylvia

Building Commissioner: Randy Bassett

2. Acceptance of the June 6, 2023 meeting minutes

Ruy daSilva made a motion to accept the minutes of June 6, 2023, and was seconded by Patrick Carr. The roll call vote had Peg Cook, Ruy daSilva, Patrick Carr in favor and Andrew Romano abstaining. (3-0)

Secretary's Note – There was confusion as to the meeting's attendance as there was a resident on the Zoom call named Alberto who spoke during this vote. As such, while the minutes were considered to be passed at the meeting, upon further review, there was an insufficient number of votes for the motion to pass. For the sake of clarity and full compliance with meeting law, a new vote will be taken on the minutes of June 6, 2023 at the August 1, 2023 meeting.

II. PUBLIC HEARINGS:

1. **REF#: ZBA-023-007: 148 Dogwood Street, Map 43A, Lots 153-155.** Applicant and owner: Nancy Santoro. Applicant seeks (1) a Special Permit to construct a 30 ft. x 25 ft. attached garage with a living space above, pursuant to Fairhaven Zoning Bylaw 198-15 Use Regulations and (2) a 5 ft. Variance for the garage to be located 15 ft. from the side property line vs. the 20 ft. minimum requirement, pursuant to Fairhaven Zoning Bylaw 198-18 Intensity of Use Schedule. — *Continued from March 7, 2023*

Mr. Kendall relayed the applicant's request to have the hearing continued to the August 1, 2023 meeting.

Ruy daSilva made a motion to continue the hearing for 148 Dogwood Street to the August 1, 2023 meeting and was seconded by Andrew Romano. The motion passed unanimously via roll call vote by Peg Cook, Patrick Carr, Andrew Romano, and Ruy daSilva (4-0).

2. **REF#: ZBA-023-021: 35 Hawthorne Street, Map 22, Lots 270-271.** Applicant and owner: Antone P. Silva. Applicant seeks a Variance to extend an existing 6 ft. x 28 ft. porch with a 6 ft. x 28 ft. addition, which will encroach further on the front setback, pursuant to Fairhaven Zoning Bylaw 198-21 Nonconforming Uses. C.

The contractor for the project, Nelson Montero, spoke on behalf of the project. He explained that Mr. Silva and his wife were planning to move back to Fairhaven and wished to increase the size of the front porch at 35 Hawthorne Street by six feet to increase its functionality. The board reviewed their copies of the plans and during this conversation, Building Commissioner, Randy Bassett, arrived at the meeting.

There were no comments from the public on this application.

Mr. Romano asked about the extent of the deck expansion, and Mr. Montero confirmed it would only be the additional six feet to make the deck twelve feet wide. Mr. Bassett explained to the board that the Variance was required as the existing deck already encroaching on the front setback and this addition would increase that non-conformity.

Ruy daSilva made a motion to approve a Variance to extend an existing 6 ft. x 28 ft. porch with a 6 ft. x 28 ft. addition, which will encroach further on the front setback, pursuant to Fairhaven Zoning Bylaw 198-21 Nonconforming Uses. C. and was seconded by Patrick Carr.

The motion passed unanimously via roll call vote with Peg Cook, Ruy daSilva, Andrew Romano, and Patrick Carr in favor (4-0).

At this point, Ms. Fidalgo requested that the resident on Zoom with the first name Alberto clearly identify himself to the board as there had been confusion over whether board member Alberto Silva was speaking. The resident identified himself as Alberto Moras and was requested to set his name on Zoom.

Afterward, Ms. Fidalgo explained how the appeal period worked for Mr. Montero, noting that Mr. Antone Silva would receive a notification from the Board about when the decision had been filed and when it would be available for pick-up once the appeal period was over.

3. **REF#: ZBA-023-022: 12 Baker Ave, Map 2, Lots 213-214.** Applicant: Dana Pickup. Owner: Kathryn Pettis. Applicant seeks 1) a Variance to build a 15 ft. x 28 ft. deck 5.3 ft. from the side setback as compared to the minimum 10 ft. side setback and 8.3 ft. from the rear setback as compared to the minimum 30 ft. rear setback, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule; 2) a Variance for the lot coverage after building the deck to be 59% as compared to the maximum 50% allowed in the Single Residence District, pursuant to Fairhaven Zoning Bylaw 198-18, Intensity of Use Schedule.

Applicant, Dana Pickup of Care Free Homes, spoke to the board on behalf of the owner. He outlined the plan to create a rear deck with its landing and stairs in the rear yard, connected to the existing mudroom via a new doorway and building off the existing smaller back deck. As the board went over the plans together, Mr. Pickup explained that they would normally not create such a long runway for a deck, but had to in this case due to the bedrooms being located at the back of the house and not wishing to cut an entrance into those.

At the building commissioner's request, Ms. Fidalgo adjusted the onscreen version of the plot plan to show the notes on lot coverage. The lot's existing total coverage was 53% and the proposed total coverage with the new deck was 59%. The board discussed all the items on the lot that caused the lot coverage to be over the maximum lot coverage and discussed how to lower it. Mr. Pickup suggested speaking with the owners to change the paved driveway to bring the lot back to 53% coverage.

Mr. Carr requested to hear from any of the abutters on this project. Ms. Jane McCarrick requested to speak to the board, explaining that she owned the currently undeveloped property that abutted the east side of 12 Baker Ave. She had no major issues but did wonder if that was the only option for access. Mr. Carr double-checked that her lot was empty, which Ms. McCarrick confirmed. He noted the fence along the property line.

Mr. Kendall read from the notes included with the meeting packet that no record had been found as to when 12 Baker Ave was allowed to have greater than the maximum 50% lot coverage. As such, he suggested that if there was a reduction in lot coverage, it be brought back into compliance to 50% or lower. Mr. Carr asked if this was a non-conforming lot prior to when lot coverage maximums were established, and Mr. Kendall recalled that lot coverage

bylaws had always existed. But there was the possibility that the shed was added without a permit. Mr. Pickup noted that the shed had always been present when his company had worked on the house.

Mr. Romano wished to confirm that the issue at hand with the lot coverage was separate from the request for a setback variance, which Mr. Kendall confirmed. Mr. Kendall also had his issues with the possibility of setting precedence by allowing greater than 50% lot coverage.

As such, Mr. Pickup once again offered to speak to the owner about reworking the driveway to lower the lot coverage, now down to 50%. He also requested a continuance to the next meeting to have time to speak with the owner and rework the plans.

Before a motion could be made on the continuance, abutter Kamryn DuBois of 17 Turner Ave stated to the board that she had no issue with the application.

Ruy daSilva made a motion to continue the hearing for 12 Baker Ave to the August 1, 2023 meeting and was seconded by Andrew Romano. The motion passed unanimously via roll call vote by Patrick Carr, Peg Cook, Ruy daSilva, and Andrew Romano. (4-0).

- 4. REF#: ZBA-023-023: 51 Balsam Street, Map 43, Lots 89, 90, 93, and a Portion of 94.** Applicant and owner: Paul and Catherine Muller. Applicant seeks a 7.7 ft. Variance to build a 24 ft. x 26 ft. garage where the proposed 21.83 ft. height is 7.7 ft. taller than the main 14.2 ft. tall dwelling, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (2).

David Davignon of Scheinder, Davignon, & Leone, Inc., spoke to the board on behalf of the applicant. He gave a narrative overview to the board, outlining that the Mullers had purchased the property 40 years ago and that the 884 sq. ft. cottage was built in the 1950s. They want to build a two-story 24 ft. x 26 ft. garage with a small office space, room for storage, and a small deck on the second floor. They require the 7.7 ft. Variance as the cottage is only 14.2 ft. tall and the proposed garage is planned to be 21.83 ft. tall and the bylaws state that accessory buildings have a maximum height of either 20 ft. or no taller than the main dwelling, whichever is lower.

He went on to explain that the garage would be set 20 ft from the house, and it would not have a bathroom and thus wouldn't require water or sewer connections. Lot coverage would not be an issue with this project and all required setbacks are met. The project had already received approval from the Conservation Commission.

Mr. Bassett double-checked the property's flood zone status, with Mr. Davignon confirming that it was in the velocity zone and that the garage would be built with break-away walls. Mr. Davignon, the board, and Mr. Bassett went over the contents of the application, with Mr. Davignon noting the included architectural plans for the garage by Charon Associates.

There were no comments from the public on this application.

Mr. daSilva asked for confirmation of the previous statement that there would be no bathroom in the garage, with Mr. Davignon again stating that there would not be a bathroom and thus there were no plans for sewer, water, or gas connections. Mr. Romano asked for confirmation that the second floor would only contain an office and storage space to facilitate working from home, with Mr. Davignon confirmed.

Andrew Romano made a motion to approve a 7.7 ft. Variance to build a 24 ft. x 26 ft. garage where the proposed 21.83 ft. height is 7.7 ft. taller than the main 14.2 ft. tall dwelling, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (2) and was seconded by Ruy daSilva. The motion passed unanimously via roll call vote with Patrick Carr, Peg Cook, Andrew Romano, and Ruy daSilva in favor (4-0).

5. **REF#: ZBA-023-024: 251 Sconticut Neck Road, Map 10, Lot 166.** Applicant and owner: Robert Faria. Applicant seeks a Variance to build a 16 ft. x 20 ft. shed on the front of the property, pursuant to Fairhaven Zoning Bylaw 198-22, Accessory Buildings and Uses A. (3).

Mr. Kendall read both the application and the meeting packet note stating that the shed location was the only reason for seeking a Variance.

Several calls were made for the applicant or a representative to speak to the board, either in person or on Zoom. However, no one was present to speak on this application.

Abutter Dana Morris of 243 Sconticut Neck Road requested to speak to the board. He is the neighbor to the direct north of the property. He had issues with the plans submitted by the applicant not properly indicating his property and how close his driveway would be to the proposed shed. Mr. Kendall acknowledged the issue raised by Mr. Morris and then explained to him that without the applicant present, the hearing would need to be continued to next month's meeting.

Ruy daSilva made a motion to continue the hearing for 251 Sconticut Neck Road to the August 1, 2023 meeting and was seconded by Andrew Romano. The motion passed unanimously via roll call vote by Patrick Carr, Peg Cook, Ruy daSilva, and Andrew Romano. (4-0).

Ruy daSilva made a motion to adjourn at 6:40 PM and was seconded by Andrew Romano; all were in favor.

Respectfully Submitted,
Stephanie A. Fidalgo
Recording Secretary

Board of Appeals